

Manville Forest Products Corporation and Richard Sharp, Case 9-CA-16845

27 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS

Upon a charge filed by the Charging Party on 18 May 1981, the General Counsel of the National Labor Relations Board issued a complaint on 2 December 1981 against the Company, the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the National Labor Relations Act by suspending Richard Sharp about 15 May 1981 because he "joined, supported or assisted the Union, and engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

On 4 January 1982 the Respondent filed a Motion for Summary Judgment and a supporting memorandum with attached exhibits. The Respondent contends that the facts do not establish an unfair labor practice and that, in any event, the alleged unlawful conduct is *de minimis*.

On 25 January 1982 the General Counsel filed an opposition to the Motion for Summary Judgment, asserting that Sharp's suspension raises issues of both law and fact that an administrative law judge should resolve.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment shall be rendered if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."¹ We have reviewed the instant matter in light of this standard and conclude that the Respondent's Motion for Summary Judgment should be granted.

The allegations and filing in this case establish that on 15 May 1981² the Respondent suspended

the Charging Party, union steward Richard Sharp, for the week of 17 May. According to the Respondent, it suspended Sharp pending investigation of unsolicited charges from three employees that Sharp tried to prevent them from cooperating with the Respondent's inquiry into another employee's alleged misconduct and told them not to tell the Employer what they had seen and heard, but to state that they had not seen or heard anything. The General Counsel claims Sharp merely advised the three employees that they need not answer the Respondent's questions.

The investigation of Sharp centered on article II, section 1 of the labor contract, which provides

No employee under this Agreement, whether union or nonunion, shall on Company property engage in intimidation, coercion or discrimination for or against the unions and thereby disturb relations under this contract. Any employee who violates this provision shall be subject to discharge.

On 20 May the Respondent took statements from the three employees, all of whom stated they had not felt intimidated or coerced by Sharp's conduct. Accordingly, the Respondent concluded that disciplinary action against Sharp was unwarranted. Sharp was notified of the decision on 21 May and told to report to work on Monday, 23 May. On 28 May he filed a grievance.

For all but 3 hours of his suspension, Sharp was on previously scheduled vacation time. The Respondent paid Sharp for the 3 hours he lost while on suspension, as well as for the Memorial Day holiday, 25 May. The Respondent granted Sharp's grievance virtually in full; Sharp's claimed damages for "mental anguish" and demand for an oral or written apology were the only relief sought but not given.³

The Respondent contends that the threshold question in this case is whether Sharp's conduct was protected. Because it was not, the Respondent argues, suspending him for engaging in this conduct could not have been unlawful. The General Counsel, on the other hand, argues that the issue is "whether Respondent suspended union steward Richard Sharp because of his energetic pursuit of his responsibilities as a representative of Respondent's employees." He maintains that this was the Respondent's motivation and, to prove this allegation, offers to show at a hearing that

¹ See *Lake Charles Memorial Hospital*, 240 NLRB 1330 (1979).

² All dates are in 1981.

³ As no party has requested it, deferral pursuant to our recent decisions in *United Technologies Corp.*, 268 NLRB 557 (1984), and *Olin Corp.*, 268 NLRB 573 (1984), is inappropriate. See, e.g., *MacDonald Engineering Co.*, 202 NLRB 748 (1973).

Sharp was disciplined because, in the course of his investigation of another employee's suspension,¹ he indicated to several potential employee witnesses that they did not have to give statements to the Respondent.

¹ Employee Parker was suspended by Respondent on May 14, 1981, for allegedly threatening a supervisor with bodily harm.

For the reasons set forth below, and relying on the General Counsel's own allegations, we agree with the Respondent that Sharp's advice to the three employees was unprotected and that the Respondent's suspension of Sharp for advising the employees as he did was not unlawful under the Act.

The General Counsel concedes that under *Cook Paint & Varnish Co.*, 246 NLRB 646 (1979), enf. denied 648 F.2d 712 (D.C. Cir. 1981), the Respondent may have lawfully compelled the three employees to cooperate in its investigation of another employee's alleged misconduct. He emphasizes, however, that Sharp did not personally refuse to answer the Respondent's questions, but rather, in his role as union steward, advised others not to answer. The Respondent, according to the General Counsel, could not lawfully suspend Sharp solely because of the advice he gave employees while acting in his official capacity.

The Board has never held that a union official's advice is entitled to such wide-reaching protection. If, for example, a union steward interferes with management by advising employees to refuse to obey their superiors' orders, such conduct is unprotected.⁴ The General Counsel's contention to the contrary notwithstanding, it is within an employer's legitimate prerogative to investigate misconduct in its plant and to do so without interference from any of its employees—including those who are union officials. Thus, if a steward interferes with such an inquiry by advising employees not to cooperate—advice which, if followed, could lawfully result in the employees themselves being disciplined⁵—it defies logic to conclude that such advice is entitled to protection solely because of its source. When a union steward is disciplined for violating shop rules, and not because of his position

as a union official, the steward cannot look to his union status for protection.⁶

The General Counsel concedes that Sharp told employees they did not have to answer the Respondent's investigatory questions. There is no dispute that Sharp personally engaged in misconduct by attempting to obstruct the Respondent's investigation of misconduct in its plant. The General Counsel also concedes that Sharp's advice not to answer led directly to his suspension. The General Counsel does not contend that the Respondent had any other motive in suspending Sharp. Therefore, the General Counsel's own allegations affirmatively establish that the only reason the Respondent suspended union steward Sharp was Sharp's own misconduct. We therefore grant the Respondent's Motion for Summary Judgment.

FINDINGS OF FACT

I. JURISDICTION

The Company, a Delaware corporation, is engaged in the manufacture of cardboard containers at its facility in Evendale, Ohio, where it annually purchases and receives products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Ohio. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On 15 May 1981 the Respondent suspended employee Richard Sharp. We find that this conduct did not violate Section 8(a)(3) and (1) of the Act for the reasons stated in the "Ruling on Motion for Summary Judgment" section of this decision.

CONCLUSIONS OF LAW

By suspending employee Richard Sharp on 15 May 1981 the Respondent did not engage in unfair labor practices within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

ORDER

The complaint is dismissed.

⁶ See *American Ship Building Co. v. NLRB*, 380 U.S. 300, 311 (1965).

⁴ *Stop & Shop*, 161 NLRB 75 (1966).

⁵ See *Cook Paint & Varnish Co.*, supra, to the extent that it reaffirmed well-established Board law that an employer may, without violating Sec. 8(a)(1), seek to compel its employees to submit to questioning concerning employee misconduct when the employer's inquiry is still in the investigatory stage and no final disciplinary action has been taken.